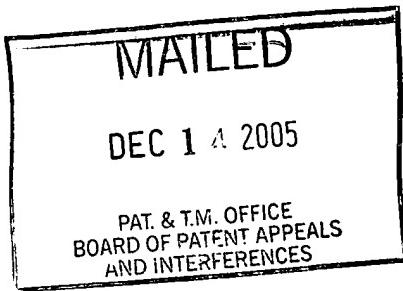




# UNITED STATES PATENT AND TRADEMARK OFFICE

DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS AND INTERFERENCES  
BOX INTERFERENCE, WASHINGTON, D.C. 20231

Filed by: Richard Torczon  
Telephone: (571) 272-9797  
Facsimile: (571) 273-0042



Applicants: Sapienza et al.  
Application No.: 10/690,894  
Filed: 10/22/03  
For: Environmentally benign anti-icing  
or deicing fluids

The above-identified application or patent has been forwarded to the Board of Patent Appeals and Interferences because it is adjudged to interfere with another application or patent. An interference has been declared. The interference is designated as No. 105,405.

Notice is hereby given the parties of the requirement of the law for filing in the Patent and Trademark Office a copy of any agreement "in connection with or in contemplation of the termination of the interference." 35 U.S.C. § 135(c).

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Richard Torczon  
Administrative Patent Judge

Mail Stop INTERFERENCES  
P.O. Box 1450  
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Tel: 571-272-9797  
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Paper 1

UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Patent Interference No. 105,405 (RT)  
(From Technology Center 1700)

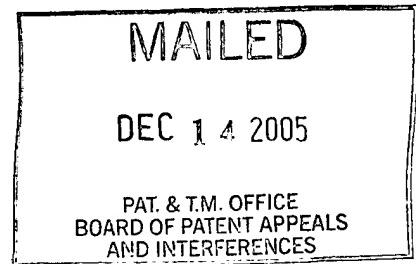
SEARS ECOLOGICAL APPLICATIONS Co., LLC  
(6,436,310 B1 and 6,440,325 B1),  
Junior Party,

v.

MLI ASSOCIATES LLC  
(10/266,975 and 10/690,894),  
Senior Party.

DECLARED: 14 December 2005

**DECLARATION - Bd.R. 203(b)**



**A. Declaration of interference**

An interference is declared (35 U.S.C. 135(a)) between the captioned parties.

Details of the application, patent, counts, and claims designated as corresponding to the counts appear under headings E and F of this DECLARATION.

**B. Administrative patent judge designated to administer the contested case**

Administrative Patent Judge Richard Torczon has been designated to administer this contested case. 37 C.F.R. § 41.104(a) [Bd.R. 104(a)].<sup>1</sup>

**C. Standing order**

A copy of the Trial Section STANDING ORDER [SO] (Paper 2) accompanies this DECLARATION. The STANDING ORDER applies to this contested case.

<sup>1</sup> "Bd.R. x" may be used as shorthand for "37 C.F.R. § 41.x". 69 Fed. Reg. 49960, 49961 (12 Aug. 2004).

**D. Conference call to set dates**

A telephone conference call to set dates for action in this contested case is scheduled for **2 p.m. (Eastern) on 7 February 2006.** (The Board will initiate the call.)

No later than four business days prior to the conference call, each party shall file and serve by facsimile (SO ¶ 4.5) a list of the motions (Bd.R. 120; Bd.R. 204; SO ¶ 26) the party intends to file.

A sample schedule for taking action during the motion phase appears as Form 2 in the STANDING ORDER. Counsel are encouraged to discuss the schedule prior to the conference call and to agree on dates for taking action. A typical motion period lasts approximately eight (8) months. Counsel should be prepared to justify any request for a shorter or longer period.

**E. The parties to this interference**

Junior Party

**Involved Patent:** 6,436,310 B1 [310], issued 20 August 2002 (09/971,165, filed 4 October 2001)

**Title:** Deicing solution

**Inventors:** Robert A. Hartley of Ontario, CANADA; and  
David H. Wood of Rome, NEW YORK

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**Involved Patent:** 6,440,325 B1 [325], issued 27 August 2002 (09/971,163, filed 4 October 2001)

**Title:** De-icing solution

**Inventors:** Robert A. Hartley of Ontario, CANADA, and  
David H. Wood of Rome, NEW YORK

Senior Party

**Involved Application:** 10/266,975 [975], filed 8 October 2002

**Title:** Environmentally benign anti-icing or deicing fluids

**Inventors:** Richard Sapienza of Shoreham, NEW YORK;  
William F. Ricks of Westerville, OHIO; and  
Axel R. Johnson of North Babylon, NEW YORK

---

**Involved Application:** 10/690,894 [894], filed 22 October 2003

**Title:** Environmentally benign anti-icing or deicing fluids

**Inventors:** Richard Sapienza of Shoreham, NEW YORK;  
William F. Ricks of Westerville, OHIO; and  
Axel R. Johnson of North Babylon, NEW YORK

**F. Counts and claims of the parties**

The claims of the parties are:

Sears [310]: 1-12

Sears [325]: 1-20

MLI [975]: 38-44, 46, and 49

MLI [894]: 36 and 37

The claims not corresponding to any count:

Sears: None

MLI: None

Count 1

A de-icing and anti-icing composition comprising an aqueous solution which contains a low molecular weight carbohydrate and a chloride or acetate salt in which the constituents are present in the following concentration:

Weight %	
Carbohydrate	3-60
Salt	Effective freezing point lowering amount
Water	Balance

and where said carbohydrate has a molecular weight in the range of about 180 to 1500, and is at least one selected from the group consisting of glucose, fructose, and higher saccharides based on glucose or fructose, or mixtures thereof.

The claims corresponding to Count 1:

- Sears [310]: 1-12  
Sears [325]: 9-14 and 18-20  
MLI [975] 38-44 and 49  
MLI [894]: 36 and 37

The benefit accorded for Count 1:

- Sears: 09/755,587, filed 5 January 2001 (6,299,793);  
09/224,906, filed 4 January 1999; and  
60/070,636, filed 7 January 1998  
MLI: 09/675,495, filed 29 September 2000 (6,506,318);  
09/436,811, filed 9 November 1999 (6,129,857);  
09/161,865, filed 28 September 1998 (5,980,774); and  
08/940,936, filed 30 September 1997 (5,876,621)

#### Count 2

A de-icing and anti-icing composition comprising an aqueous solution which contains a low molecular weight carbohydrate and a chloride or acetate salt in which the constituents are present in the following concentration:

	Weight %
Amino acid or oligopeptide	1-60
Salt	Effective freezing point lowering amount
Water	Balance.

The claims corresponding to Count 2:

Sears [310]: None  
Sears [325]: 1-20  
MLI [975]: 46 and 49  
MLI [894]: None

The benefit accorded for Count 2:

Sears: 09/755,587, filed 5 January 2001 (6,299,793);  
09/224,906, filed 4 January 1999; and  
60/070,636, filed 7 January 1998  
MLI: 09/675,495, filed 29 September 2000 (6,506,318);  
09/436,811, filed 9 November 1999 (6,129,857); and  
09/161,865, filed 28 September 1998 (5,980,774)

#### **G. Heading to be used on papers; exhibit numbers**

Addendum 1 provides the heading that shall be used on all papers filed in the contested case. See SO ¶ 7.2.1.

The range of exhibit numbers is assigned as follows (Bd.R. 154(c)(1); SO ¶ 20.2.1):

MLI: 1001-1999.

Sears: 2001-2999.

**H. Order form for requesting file copies**

When requesting copies of files, use of Addendum 2 (SO Form 4) will greatly expedite processing of the request. Please attach a copy of Part E of this DECLARATION with a hand-drawn circle around the patents and applications for which a copy of a file wrapper is requested.

**I. Required paragraph for affidavits and declarations**

The Board has recently experienced a rash of cases in which a witness has belatedly advanced reasons why he or she would be unable to appear for cross examination at a reasonable time and place in the United States. Consequently, the Board is requiring the following paragraph to be included on the signature page of all affidavits (including declarations) filed in this case to prevent surprise and hardship to the party relying on the testimony of the witness:

In signing this affidavit/declaration, I recognize that the affidavit/declaration will be filed as evidence in a contested case before the Board of Patent Appeals and Interferences of the United States Patent and Trademark Office. I also recognize that I may be subject to cross examination in the case and that cross examination will take place within the United States. If cross examination is required of me, I will appear for cross examination within the United States during the time allotted for cross examination.

/RICHARD TORCZON/  
Administrative Patent Judge

Interference No. 105,405  
Sears Ecol. Apps. Co. v. MLI Assocs. LLC

Paper 1  
Page 7

Enclosures:

Copy of STANDING ORDER (Paper 2)  
Copy of the application<sup>2</sup> claims for 10/266,975 and 10/690,894

cc (via overnight delivery):

For Sears Ecological Applications Co., LLC:

Owen D. Marjama  
WALL MARJAMA & BILINSKI  
101 S SALINA ST STE 400  
SYRACUSE NY 13202  
Tel: 315-425-9000  
Fax: 315-425-9114

For MLI Associates LLC:

Alan B. Clement  
HEDMAN & COSTIGAN, P.C.  
1185 AVE OF THE AMERICAS  
NEW YORK NY 10036-2646  
Tel: 212-302-8989  
Fax: 212-302-8998

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<sup>2</sup> Any United States patent listed in this paper is available at <http://patft.uspto.gov/netahtml/srchnum.htm>.

Interference No. 105,405  
Sears Ecol. Apps. Co. v. MLI Assocs. LLC

Paper 1  
Page 8

**ADDENDUM 1**

Filed on behalf of: [Name of Party]  
By: [Name of lead counsel]  
Name of backup counsel  
Street address  
City, State, and ZIP Code  
Tel:  
Fax: ]

Paper No. [Leave blank]

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

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**SEARS ECOLOGICAL APPLICATIONS CO., LLC  
(6,436,310 B1 and 6,440,325 B1),  
Junior Party,**

V.

**MLI ASSOCIATES LLC  
(10/266,975 and 10/690,894),  
Senior Party.**

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**Patent Interference No. 105,405 (RT)**

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**TITLE OF PAPER**

**ADDENDUM 2**

**FILE COPY REQUEST**  
Patent Interference No. 105,405

Attach a copy of sections E and F of this DECLARATION to this REQUEST. On the copy, circle each patent and application that you are requesting. Include the following information to facilitate processing of this REQUEST:

1. Charge fees to USPTO Deposit Account No. \_\_\_\_\_
2. Complete address,<sup>3</sup> including street, city, state, ZIP code, and telephone number:

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3. Telephone, including area code: \_\_\_\_\_

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<sup>3</sup> Provide a street address, NOT a Post Office Box. The Office of Public Records uses a commercial overnight delivery service rather than the United States Postal Service to deliver file copies.